

Title 23, Article 1, Chapter 1, Article 2, New Section 5.1

§ 5.1. Ex Parte Communications.

(a) Ex parte communications concerning matters, other than purely procedural matters, under the board's jurisdiction that are subject to a vote are prohibited. However, if such a prohibited communication occurs, any board member or appointed hearing officer who receives the ex parte communication shall disclose the content of the communication on the record.

(b) "Matters under the board's jurisdiction" means permit actions, enforcement actions, and other quasi-judicial matters for which an application has been filed with the board. It shall not mean quasi-legislative actions, including topics of general concern which are not related to a specific application, such as the adoption of an overall policy regarding flood protection or general policy concerns which may be raised at task force, subcommittee, or other meetings. For enforcement proceedings pursuant to Article 4 of these regulations, the prohibition shall attach after the Executive Officer or Chief Engineer either issues an order to stop work or mails a notice of violation, whichever is sooner. After the board or appointed hearing officer votes on an application and any opportunity for reconsideration pursuant to Article 4.1 of these regulations has expired, the matter is no longer a "matter under the board's jurisdiction."

(c) "Procedural matters" include, but are not limited to, communications regarding the schedule, location, or format for hearings, filing dates, identity of parties, and other such non-substantive information.

(d) When the ex parte rules of this section attach, any board member or appointed hearing officer may only take a field trip to the site of a proposed project or a pending enforcement action if ten (10) days' advance public notice is given stating the time, location, and intended scope of the field trip.

(e) Any required disclosure under this section shall occur prior to or at the same time that the board or appointed hearing officer considers the matter that is the subject of the ex parte communication.

(f) Compliance with the disclosure requirement regarding the receipt of a written ex parte communication shall be accomplished by sending a copy of the written communication and any response to the communication to the Executive Officer.

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(g) Compliance with the disclosure requirement regarding the receipt of an oral ex parte communication shall be accomplished by submitting a memorandum to the Executive Officer for inclusion into the record of the matter that is the subject of the ex parte communication.

(h) The memorandum required by paragraph (g) shall include the substance of the communication, any response by the recipient board member or appointed hearing officer, and the identity of each person from whom the recipient board member or appointed hearing officer received the communication.

(i) When disclosure is required, the Executive Officer, board member, or appointed hearing officer shall notify the interested party as soon as practicable that a full disclosure of the ex parte communication shall be entered in the board's record.

Note: Authority cited: Section 8571, Water Code. Reference: Section 8578, Water Code.